

FILED  
YOLO COUNTY  
SUPERIOR COURTS

AUG 05 2009

By MPH  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
COUNTY OF YOLO

People of the State of California,

Plaintiff,

vs.

Marco Antonio Topete,

Defendant.

Case No.: CR 08-3355

**ORDER OF RECUSAL PURSUANT TO  
CODE OF CIVIL PROCEDURE  
SECTION 170.1**

**Dept 2**

Following an earlier oral request, Defendant has now filed a written statement objecting to this matter proceeding before me pursuant to Code of Civil Procedure section 170.3, subdivision (c)(1). The basis for the original oral request does not rise to the level of a disqualification, and neither does the written statement standing alone. However, when coupled with the present posture of the case there is reason for further consideration.

In particular, as shown in open court on July 31, 2009, I had one recollection of earlier disclosures and proceedings which the prosecution supported to a limited extent, while the defense had a different recollection (or perhaps an absence of recollection would be a better way to state it). The record is silent as to the subject otherwise. Defendant is now faced with a case where his own memory and that of his attorneys is one way while the Judge and prosecution hold a contrary position. While I am not in any doubt as to my personal ability to provide the Defendant with a fair trial, he might now believe this to be a case where the Court and prosecutor

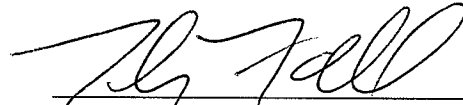
1 are aligned against his interests even though such a belief cannot be said to be a reasonable one.

2 I have given the matter extensive consideration both day and night, and have come to the  
3 conclusion that – despite there being no doubt in my mind as to my ability to be fair to both  
4 parties and their attorneys – this now appears to be a case where the interests of justice are best  
5 furthered by recusal under Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(i). The  
6 alternative to recusal is to follow the option available under Code of Civil Procedure sec. 170.3,  
7 subdivision (c)(4), for tacit consent by passage of time but the proximity of the next hearing date,  
8 August 7, 2009, suggests that a recusal under Code of Civil Procedure sec. 170.1, subdivision  
9 (a)(6)(A)(i), is the better course and I now recuse myself under that provision.

10 This matter is referred to the Presiding Judge.

11 IT IS SO ORDERED.

12 August 5, 2009

  
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Timothy L. Fall  
Judge of the Superior Court